

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEWITT NUNERY, an individual, on  
behalf of himself and all others similarly  
situated and aggrieved,

Plaintiff,

v.

SIEMENS MOBILITY, INC., a  
Delaware Corporation, ACARA  
SOLUTIONS, INC., a New York  
Corporation, ALERON GROUP, INC., a  
New York Corp, and Does 1 to 100,  
inclusive,

Defendant,

No.: 2:20-cv-00311-TLN-AC

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR REMAND**

This matter is before the Court on Plaintiff Dewitt Nunery's ("Plaintiff") Motion to Remand. (ECF No. 7.) Defendant Siemens Mobility Inc. ("Defendant") opposed the motion. (ECF No. 10.) Plaintiff replied. (ECF No. 13.) For reasons set forth below, the Court GRANTS Plaintiff's motion to remand.

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**I. FACTUAL AND PROCEDURAL BACKGROUND**

Defendant employed Plaintiff and other individuals as hourly nonexempt warehouse employees in California. (ECF No. 5-1 at 3.) On December 23, 2019, Plaintiff filed this putative class action in Sacramento County Superior Court and asserted the following claims: (1) failure to provide meal periods, Cal. Lab. Code §§ 226.7, 512(a), IWC Wage Order No. 9-2001, § 11; (2) failure to provide rest breaks, Cal. Lab. Code §§ 226.7, 512, and 1194, IWC Wage Order No. 9-2001, § 12; (3) failure to pay minimum wages, Cal. Lab. Code §§ 510, 1194, 1194.2, and 1197, IWC Wage Order No. 9-2001, § 4; (4) failure to pay overtime wages, Cal. Lab. Code §§ 510, 1194, IWC Wage Order No. 9-2001, § 3; (5) failure to provide one day's rest in seven, Cal. Lab. Code §§ 551, 552, IWC Wage Order No. 9-2001, § 13; (6) failure to furnish timely and accurate wage statement upon payment of wages, Cal. Lab. Code § 227.3; (7) failure to pay all wages owed upon separation, *id.* §§ 201–203; (8) violations of California's unfair competition law, Cal. Bus. & Prof. Code § 17200; and (9) for civil penalties pursuant to California's Private Attorney General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698. (*See* ECF No. 5-1 at 14–27, 61.)

On February 10, 2020, Defendant removed the case to this Court based on diversity jurisdiction. (ECF No. 1.) Defendant filed an amended notice of removal on March 10, 2020. (ECF No. 5.) Plaintiff filed the instant motion to remand on April 9, 2020. (ECF No. 7.)

**II. STANDARD OF LAW**

The district court has original jurisdiction over civil actions between citizens of different states in which the alleged damages exceed \$75,000. 28 U.S.C. § 1332(a)(1). The party asserting federal jurisdiction bears the burden of proving diversity. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (citing *Resnik v. La Paz Guest Ranch*, 289 F.2d 814, 819 (9th Cir. 1961)).

The amount in controversy is determined by reference to the complaint itself and includes the amount of damages in dispute, as well as attorney's fees, if authorized by statute or contract. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005). Where the complaint does not pray for damages in a specific amount, the defendant must prove by a preponderance of the evidence the amount in controversy exceeds \$75,000. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997) (citing *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404

(9th Cir. 1996)). If the amount is not facially apparent from the complaint, the court may “require parties to submit summary-judgment-type evidence relevant to the amount in controversy at the time of removal.” *Id.* (citing *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335–36 (5th Cir. 1995)).

“Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). “The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper, and that the court resolves all ambiguity in favor of remand to state court.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (citation and internal quotation marks omitted).

### III. ANALYSIS

In the instant motion, Plaintiff does not dispute complete diversity of citizenship. (ECF No. 7 at 6.) Instead, Plaintiff moves to remand based on the amount in controversy, arguing Defendant has failed to show by a preponderance of evidence the amount in controversy exceeds \$75,000. (*Id.* at 7.) In opposition, Defendant argues the amount in controversy easily exceeds \$75,000 based on Plaintiff’s individual claims as alleged in the complaint. (ECF No. 10 at 13.) Defendant’s summarizes its calculations for each of Plaintiff’s claims as follows: (1) failure to pay overtime wages — \$41,949.51; (2) failure to pay minimum wages — \$11,840.57; (3) failure to provide meal breaks and failure to provide rest breaks — \$16,779.81; (4) failure to provide accurate itemized wage statements — \$2,950; and (5) PAGA penalties — \$5,900, for a total of \$80,414.51.<sup>1</sup> (*Id.* at 16–21.) As will be discussed, Defendant fails to meet its burden as to Plaintiff’s overtime claim, which accounts for the bulk of the amount in controversy. Because Defendant cannot meet the threshold \$75,000 without the overtime claim, the Court need not and does not address the remaining claims.

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<sup>1</sup> Defendant also argues Plaintiff “could incur \$245,550 in attorneys’ fees.” (ECF No. 10 at 23.) Defendant did not assign a value to attorneys’ fees in its amended notice of removal (ECF No. 5 at 10) nor does it provide sufficient evidence to support the \$245,550 estimate raised for the first time in its opposition. Defendant relies solely on four unrelated state court actions and assertions from Plaintiff’s request for attorneys’ fees specific to the motion to remand, which the Court denies herein. (ECF No. 10 at 23).

1 In its notice of removal, Defendant arrives at a total of \$44,199 for Plaintiff's overtime  
2 claims using the following formula: Plaintiff's hourly rate of \$16.37 x 1.5 x 10 hours of unpaid  
3 overtime a week x total number of workweeks between September 1, 2016 and February 10,  
4 2020. (ECF No. 5 at 8.) Defendant reduces this total to \$41,949.51 in its opposition using a  
5 newly provided hourly rate from Plaintiff's motion to remand. (ECF No. 10 at 15–16.)  
6 Defendant's estimate is based solely on the allegations in the complaint. (*Id.* at 13–15.) More  
7 specifically, Defendant emphasizes that Plaintiff alleges he and other employees spent “one-half  
8 hour to an hour” working off the clock each shift and off-the-clock time was never subsequently  
9 added or compensated. (*Id.* at 14.) Plaintiff also alleges Defendants mandated off-the-clock work  
10 before and after clocking in for shifts and did not provide minimum wages or overtime pay for  
11 that time. (*Id.*) Lastly, Defendant points to Plaintiff's allegation that these unpaid off-the-clock  
12 working periods are part of Defendant's “uniform policy and practice.” (*Id.* at 14–15.)

13 For his part, Plaintiff points out that Defendant fails to provide any actual summary  
14 judgment-type evidence to demonstrate the amount of controversy exceeds the jurisdictional  
15 minimum. (ECF No. 7 at 15; ECF No. 13 at 7.) Plaintiff also argues Defendant incorrectly  
16 assumes Plaintiff allege Defendant *never* paid overtime. (ECF No. 7 at 15.) Plaintiff argues  
17 although the complaint does allege Defendant failed to pay Plaintiff overtime, the complaint does  
18 not say that this failure to pay was for all hours, most hours, or anything close to what Defendant  
19 assumes — 10 hours every workweek. (*Id.* at 16.) Moreover, Plaintiff's counsel submits a  
20 declaration summarizing the total overtime Defendant has already paid Plaintiff based on his  
21 wage statements, which indicates Defendants have paid Plaintiff a total of \$25,899.03 in  
22 overtime. (ECF No. 7-1 at 5.) Plaintiff argues the maximum amount of unpaid overtime at issue  
23 is \$1,566.72 based on applying a \$15.36 unweighted average hourly rate x 1.5 x 2 hours per  
24 workweek x 34 workweeks. (ECF No. 13 at 8.) Put simply, Plaintiff argues Defendant's  
25 estimate is unsupported by any evidence, based on unreasonable assumptions from the complaint,  
26 and fails to subtract the considerable amount of overtime already paid.

27 Because Plaintiff challenges Defendant's estimate, Defendant bears the burden to  
28 establish jurisdiction by a preponderance of the evidence. *Dart Cherokee Basin Operating Co.,*

1 *LLC v. Owens*, 574 U.S. 81, 87–88 (2014); *see also Ibarra v. Manheim Invs.*, 775 F.3d 1193,  
2 1197 (2015). Defendant must present “more than a plausible case to show it satisfies the  
3 jurisdictional prerequisite.” *Hender v. Am. Directions Workforce LLC*, No. 2:19-cv-01951-KJM-  
4 DMC, 2020 WL 5959908 at \*2 (E.D. Cal. Oct. 7, 2020). Defendant does not provide the Court  
5 with *any* evidence in opposition and instead relies entirely on Plaintiff’s vague allegations. As  
6 such, Defendant has not met its burden. Notably, although the Court only addressed amount in  
7 controversy for Plaintiff’s overtime claim in this Order, Defendant’s failure to provide any  
8 evidence whatsoever is also fatal to Defendant’s arguments as to Plaintiff’s other claims.

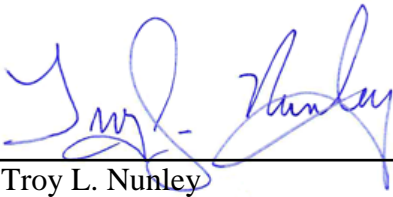
9 Accordingly, the Court finds Defendant has not shown by a preponderance of the  
10 evidence that the amount in controversy exceeds \$75,000. Each party shall bear its own fees and  
11 costs associated with this motion.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Court hereby GRANTS Plaintiff’s Motion to Remand.  
14 (ECF No. 7.) This case is REMANDED to Sacramento County Superior Court.

15 IT IS SO ORDERED.

16 Dated: September 20, 2021

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20 Troy L. Nunley  
United States District Judge  
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